

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

STEPHEN JACKSON and SHEILA JACKSON,  
Individually and on behalf of a class,

Plaintiffs,

v.

FRENKEL LAMBERT WEISS WEISMAN  
& GORDON, LLP

Defendant.

Case No. 12-CV-3163

**DEFENDANT'S ANSWER TO THE COMPLAINT**

Defendant Frenkel Lambert Weiss Weisman & Gordon LLP ("Defendant"), by their attorneys, Hodgson Russ LLP, in answer to the Complaint of plaintiffs Stephen Jackson and Sheila Jackson ("Plaintiffs"), alleges as follows:

**INTRODUCTION**

1. Refers to the Complaint, which speaks for itself, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1.

**JURISDICTION AND VENUE**

2. Paragraph 2 of the Complaint states a legal conclusion to which no response is required. If and to the extent a response is deemed required, Defendant denies the allegations.

3. Paragraph 3 of the Complaint states a legal conclusion to which no response is required. If and to the extent a response is deemed required, Defendant denies the allegations.

**PARTIES**

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4.

5. Admits the allegations in Paragraph 5.

6. Denies the allegations in paragraph 6.

7. Paragraph 7 of the Complaint states a legal conclusion to which no response is required. If and to the extent a response is deemed required, Defendant denies the allegations.

### **FACTS**

8. Refers to Exhibit A of the Complaint, which speaks for itself, and denies the remaining allegations in paragraph 8.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10.

11. Denies the allegations in paragraph 11.

12. Refers to Exhibit A of the Complaint, which speaks for itself, and denies the remaining allegations in paragraph 12.

13. Denies the allegations in paragraph 13.

14. Refers to Exhibit B of the Complaint, which speaks for itself, and denies the remaining allegations in paragraph 14.

15. Refers to Exhibit C of the Complaint, which speaks for itself, and denies the remaining allegations in paragraph 15.

16. Denies the allegations in paragraph 16.

17. Denies the allegations in paragraph 17.

18. Denies the allegations in paragraph 18.

**COUNT I – FDCPA**

19. Repeats its responses to paragraphs 1 through 18.
20. Denies the allegations in paragraph 20.
21. Refers to the language of the statute, which speaks for itself, and denies the remaining allegations in paragraph 21.
22. Denies the allegations in paragraph 22.
23. Refers to the language of the statute, which speaks for itself, and denies the remaining allegations in paragraph 23.

**CLASS ALLEGATIONS**

24. Denies the allegations in paragraph 24.
25. Denies the allegations in paragraph 25.
26. Denies the allegations in paragraph 26.
27. Denies the allegations in paragraph 27.
28. Denies the allegations in paragraph 28.
29. Denies the allegations in paragraph 29.
30. Denies the allegations in paragraph 30.
31. Denies the allegations in paragraph 31.
32. Denies the allegations in paragraph 32.

**GENERAL DENIAL**

33. Denies each and every other allegation not otherwise expressly addressed in this Answer.

**FIRST DEFENSE**

34. The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

35. The injuries, damages, and/or expenses alleged in the Complaint are the direct and proximate result of the acts, omissions, negligence, fault and/or breach of duty of Plaintiffs.

**THIRD DEFENSE**

36. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

**FOURTH DEFENSE**

37. If there was a violation of the FDCPA, none being admitted, it was not willful or intentional and instead resulted from a *bona fide* error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors.

**FIFTH DEFENSE**

38. Plaintiffs' purported causes of action, and each of them, are barred by the equitable doctrine of unclean hands.

**SIXTH DEFENSE**

39. Any claimed damages are subject to setoff or credit under law and equity for any funds owed in connection with the obligations referred to Defendant for collection.

**SEVENTH DEFENSE**

40. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitation.

**EIGHTH DEFENSE**

41. This Court lacks personal jurisdiction over Defendant.

**NINTH DEFENSE**

42. At all pertinent times, Defendant acted in compliance with all applicable laws, regulations, and statutes.

**TENTH DEFENSE**

43. Plaintiffs lack standing to sue.

**ELEVENTH DEFENSE**

44. Plaintiffs' claims are barred by the doctrine of estoppel.

**TWELFTH DEFENSE**

45. Plaintiffs' claims are barred by the doctrine of waiver.

**THIRTEENTH DEFENSE**

46. Plaintiffs are precluded from recovering against the Defendant because the Complaint is based on errors of fact and/or law.

**FOURTEENTH DEFENSE**

47. Any damages sustained by Plaintiffs were a result of the acts of third persons or entities over whom Defendant had no control.

**FIFTEENTH DEFENSE**

48. There is no privity/duty between Plaintiffs and Defendant.

**SIXTEENTH DEFENSE**

49. The Plaintiffs cannot satisfy the requirements necessary to sustain a collective action.

**SEVENTEENTH DEFENSE**

50. The Plaintiffs have not properly identified an alleged class, and the Plaintiffs cannot satisfy the requirements of Federal Rules of Civil Procedure 23.

**EIGHTEENTH DEFENSE**

51. The Defendant should be awarded attorney's fees and costs associated with its defense of this action pursuant to 15 USC 1692 k(a)(3) because this action was brought in bad faith and for the purpose of harassment.

**NINETEENTH DEFENSE**

52. The Defendant did not violate the FDCPA since the Bank of America, N.A., as a servicer of the loan, is deemed a creditor under the applicable Pooling Service Agreement, which permits it to foreclose in the event of a default.

**TWENTIETH DEFENSE**

53. Defendant reserves its right to amend this Answer and to raise any additional affirmative defenses that become apparent during discovery proceedings in this matter and after.

**JURY DEMAND**

54. Defendant demands a trial by jury of all issues triable by a jury.

WHEREFORE, Defendant respectfully requests the following relief:

- A. Dismissal of Complaint;
- B. Costs and disbursements; and
- C. Such other and further relief as the Court deems proper.

Dated: New York, New York  
August 7, 2012

**HODGSON RUSS** LLP  
Attorneys for Defendant  
Frenkel Lambert Weiss Weisman & Gordon, LLP

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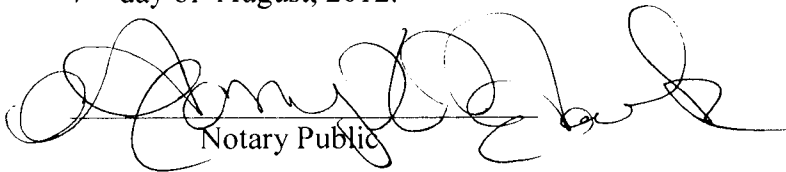
**CERTIFICATE OF SERVICE**

Alba Alessandro, by her signature below, hereby certifies that on August 7, 2012, Defendant's Answer was served by filing the Answer using the Court's CM/ECF system which immediately notifies all registered users via electronic transmission at the respective email addresses designated for such service.

Dated: August 7, 2012

  
Alba Alessandro

Sworn to before me this  
7<sup>th</sup> day of August, 2012.

  
Notary Public

*Amy K. Hawk*  
Notary Public, State of New York  
No. 01246192626  
Qualified in Queens County  
Commission Expires Sept. 2, 2012